S.B. CIVIL WRIT PETITION NO.859/2005

Jogindero Devi and others. vs. Gurjant Singh and others.

Date : 12.5.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. NL Joshi, for the petitioners.

Mr. HR Soni, for the respondents.

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Heard learned counsel for the parties.

This writ petition is directed against the order dated 19.1.2005 by which the trial court dismissed the application of the petitioners/defendants raising objections about admissibility of the document and directed to exhibit the agreement in question keeping the decision about the admissibility of the document reserved to be decided at the time of decision of the suit.

Detail facts are not necessary for the purpose of deciding the present writ petition because of the fact that there is only question of law which has been raised by the learned counsel for the petitioners.

According to learned counsel for the petitioners, the document requires registration as well as stamp duty and since the document has not been executed on proper stamps, therefore, it cannot be admitted in evidence. It is submitted that once the document is admitted in evidence,

the objection about the admissibility of the document will not survive and the petitioners will not be able to raise objection even before the appellate court.

According to learned counsel for the petitioners, the Hon'ble Apex Court in the case of Bipin Shantilal Panchal versus State of Gujarat reported in R.L.W. 2001(1) SC page 169 very categorically held that the Court may proceed after admitting the document subject to objections and may allow the other evidence to prove the document but in case where the objections relate to the deficiency of the stamp duty of a document, then the Court has to decide the objection before proceeding further. The Hon'ble Supreme Court further held that for all other objections except as above said objection, the court may follow the procedure as given out in the judgment of B.S. Panchal (supra).

In view of the above, according to learned counsel for the petitioners, the court below failed to exercise the jurisdiction vested in it. It is also submitted that the order of the trial court is just contrary to the mandate of the Hon'ble Supreme Court.

Learned counsel for the non-petitioners/plaintiffs submitted that the plaintiffs filed a suit for specific performance of contract and whether the stamp duty is payable and by whom it is payable and what stamp duty is payable are the questions which can be decided after admitting the document in evidence and after evidence and,

therefore, the court below has not committed any illegality in passing the impugned order.

According to learned counsel for the plaintiffs, as per the provisions of Order 18 Rule 4 CPC, the objections about admissibility of the document are required to be decided by the court while deciding the suit because the law provides that the evidence shall be recorded by filing affidavits so far as examination-in-chief is concerned and the objection about admissibility of the document can be raised at the time of cross examination if that can be raised at all but the objection about any question during the cross examination is required to be decided by the court only when the court decides to decide the suit.

Learned counsel for the non-petitioners/plaintiffs relied upon the judgment of the Hon'ble Supreme Court delivered in the case of Chilakuri Gangulappa vs. Revenue Divisional Officer, Madanpalle (Civil Appeal No.1800 of 2001) decided on 14.3.2001 wherein the Hon'ble Supreme Court observed that when the document is presented before the civil court and found insufficiently stamped, the court has power to ask the party to pay the stamp duty and if the stamp duty is paid, the court will sent the authenticated document thereof along with the certificate of payment to the registering authority and in case, the party refused to pay the deficit stamp duty, then the Court has option to impound the document and sent it to the Collector for necessary action.

According to learned counsel for the non-petitioners, the Hon'ble Apex Court further held that even in case where there is an allegation of deficit stamp duty, the court is required to admit the document and thereafter follow the procedure as provided under Section 40 of the Stamps Act.

Learned counsel for the non-petitioners also relied upon the judgment of the Hon'ble Supreme Court delivered in the case of Smt. Dayamathi Bai vs. K.M. Shaffi reported in AIR 2004 SC page 4082 wherein it has been held by the Hon'ble Apex Court that the objection about the mode of proof of the document is an objection of formal nature and if the said objection has not been taken in time, the objection cannot be taken at a later stage of the suit or in appeal or in revision but when the objection is about admissibility of the document, then that objection can be taken at a later stage even at the stage of appeal or revision.

I have considered the rival submissions.

It is clear that the judgment which was relied upon by the learned counsel for the petitioners delivered in the case of B.S. Panchal (supra), the Hon'ble Supreme Court held that the Court is required to determine the objection about the deficiency of the stamp duty before proceeding in the suit. However, after the decision of the Hon'ble Supreme Court, the CPC was amended and a complete set of procedure has been provided how the evidence will be

recorded in appealable and non-appealable cases and as per Rule 4 of Order 18 CPC, the parties are required to file the affidavits which shall be the examination-in-chief. The documents are tendered in evidence or marked as exhibits in the examination-in-chief only. All objections during the recording of evidence before the Commissioner are required to be recorded only by the Commissioner for the purpose of having a decision of the Court at the stage of the arguments, obviously final arguments, therefore, after the amendment of CPC, the procedure can be followed as provided in Order 18 Rule 4 CPC, the validity of which has also been held by the Hon'ble Apex Court.

In view of the above, I do not find any reason to interfere in the impugned order while exercising jurisdiction under Article 227 of the Constitution of India.

Accordingly, this writ petition, having no merit, is hereby dismissed.

The stay order granted by this Court on 10.2.2005 is vacated and the stay petition is also dismissed.

(PRAKASH TATIA), J.

S.Phophaliya